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**Statement of the Council for Court Excellence
Before the Committee on the Judiciary & Public Safety
Council of the District of Columbia**

**Performance Oversight Hearing for the
Department of Corrections**

March 2, 2022

Good afternoon, Councilmember Allen and members of the Committee.

My name is Emily Tatro, and I am the Deputy Director of the Council for Court Excellence (CCE). I am joined today by my colleague Casey Anderson, CCE's Policy & Communications Manager. CCE is a nonpartisan, nonprofit organization with the mission to enhance justice in the District of Columbia. For nearly 40 years, CCE has worked to improve the administration of justice in the courts and related agencies in D.C. through research and policy analysis, convening diverse stakeholders, and creating educational resources for the public. Please note that in accordance with our policy, no judicial member of CCE participated in the formulation or approval of this testimony. This testimony does not reflect the specific views of, or endorsement by, any judicial member of CCE.

We want to begin by sharing a few quotes:

- The jail is “a filthy example of man's inhumanity to man.”
- Conditions in the facility are so bad as to be “cruel and unusual punishment.”
- “The jail is filthy, with roaches and rodents in the food and eating utensils and throughout the facility.”
- Residents “do not receive adequate medical attention.”
- “Prisoners are often punished or thrown into solitary confinement without being informed of charges or given [a] hearing.”

These quotes about inhumane and uninhabitable conditions are not from the Washington Lawyer's Committee's 2015 report citing mold, water penetration through the walls, leaking plumbing, and deteriorating conditions at the current D.C. Jail.¹ Nor are they from the D.C. Auditor's 2019 investigation, which found that the D.C. Department of Health had repeatedly cited the D.C. Department of Corrections (DOC) for violating industry standards related to environmental conditions.² The quotes are not from the D.C. Inspector General's July 2021 report finding that DOC did not effectively identify and address staff non-compliance with its use of force requirements.³ They are not even from the November 2021 U.S. Marshals Service (USMS) letter to DOC detailing unsanitary living conditions and the punitive denial of food and water to residents by staff.⁴

These quotes are actually taken from a 1972 ACLU of DC report on conditions at the old D.C. Jail,⁵ but they are strikingly similar to the critiques levied by current D.C. Jail residents, DOC staff, and others advocating and litigating for improved conditions. The 50-year-old report, *Seeds of Anguish*, was published just nine months before an uprising at the old D.C. Jail in which residents took 12 hostages before reaching a peaceful resolution. The ACLU-DC's

¹ Washington Lawyers' Committee for Civil Rights & Urban Affairs. *D.C. Prisoners: Conditions of Confinement in the District of Columbia*. June 2015. https://www.washlaw.org/pdf/conditions_of_confinement_report.pdf

² Office of the District of Columbia Auditor. *Poor Conditions Persist at Aging D.C. Jail: New Facility Needed to Mitigate Risks*. February 2019. <https://dcauditor.org/report/poor-conditions-persist-at-aging-d-c-jail-new-facility-needed-to-mitigate-risks/>

³ D.C. Office of the Inspector General. OIG Project No. 20-1-26FL. *DOC's Current Procedures for Receiving, Investigating, and Resolving Use of Force Incidents Are Not Operating Effectively*. July 2021. <http://app.oig.dc.gov/news/PDF/release10/OIG%20Final%20Report%20No.%2020-1-26FL%20--%20Department%20of%20Corrections%20Use%20of%20Force.pdf>

⁴ Spencer S. Hsu, Emily Davies, Paul Duggan, "D.C. Jail Ordered U.S. Marshals to Leave After Surprise inspections, Judge Says", *The Washington Post*, November 3, 2021, https://www.washingtonpost.com/local/legal-issues/dc-jail-conditions-inspection/2021/11/03/c75d08ea-3c27-11ec-bfad-8283439871ec_story.html

⁵ The New York Times. *A.C.L.U. Calls the Capital Jail A Filthy Example of Inhumanity*. January 30, 1972. <https://www.nytimes.com/1972/01/30/archives/a-c-l-u-calls-the-capital-jail-a-filthy-example-of-inhumanity.html>

recommendations were printed three and a half years before litigation was filed in which Judge William Bryant eventually held that the conditions at the old D.C. Jail constituted cruel and unusual punishment, in violation of the 8th Amendment. He wrote that:

These conditions simply are not to be tolerated in a civilized society, much less in our national capital. These are conditions which turn men into animals, conditions which degrade and dehumanize. . . . For imprisonment under such conditions, where a man may be stuffed into a tiny cell with another, surrounded by the nocturnal moans or screams of mentally disturbed but untreated fellow inmates, plagued by rats and roaches, sweltering by summer and shivering by winter, unable to maintain significant contact with his family in the outside world, sometimes going for long periods without real exercise or recreation, can only have one message for him: society does not acknowledge your existence as a fellow human being.⁶

It simply should not be that the District is still facing the same range of problems inside our correctional facilities today as we did fifty years ago. What did D.C. learn from these earlier crises? What did D.C. learn from the conditions that led to a riot? What did D.C. learn about the impact of building a new facility? What did D.C. learn from the many investigations, inspections, and lawsuits of the last few years? We hope that these tragedies have indeed taught us that a safer and more humane facility will not be brought into existence just because we hope it to be so; it requires swift and decisive leadership to create a wholly reimagined correctional system.

CCE is ready to support returning DOC Director Faust, the Mayor, and the D.C. Council in finalizing a shared vision and executing plans for change. As members of this Committee know well, CCE facilitated more than two years of work by the District Task Force on Jails & Justice (Task Force). The Task Force is an independent, interdisciplinary advisory body dedicated to redefining the D.C.'s approach to incarceration by building city-wide engagement,

⁶ *Inmates, DC Jail v. Jackson*, 416 F. Supp. 119 (D.D.C. 1976) at 123.

centering the voices of those with lived experiences; understanding community priorities; and exploring the use and design of secure detention and community-based solutions. It has now been a full year since the Task Force published its 80 final recommendations with individualized implementation plans to help D.C. invest in safe communities, lower incarceration rates by half, end the over-incarceration of Black people. The report also includes implementation plans for regaining local control over D.C.'s criminal legal system and creating a new non-traditional facility that would house all people still detained pre-trial or sentenced to incarceration. CCE continues to track D.C.'s progress toward implementing these recommendations and educating the community on the state of the criminal legal system in the District.

1) The Importance of Transparency at DOC

a. Results of Memorandum of Understanding with the U.S. Marshals Service

DOC must ensure transparency regarding the metrics they and the U.S. Marshals Service (USMC) are using to evaluate its progress towards fixing the systemic issues within its facilities. More than three months ago, DOC entered into a Memorandum of Understanding (MOU) with the USMS to fix the conditions at the D.C. Jail within six months through “corrective action plans.” No progress reports have been shared publicly despite the fact a [press release](#) announcing the MOU states, “[i]n accordance with the District’s continued commitment to transparency and accountability, the USMS will regularly report on the DOC’s progress on implementing identified corrective actions to various stakeholders, including the USMS, District government, and the judiciary.”

Currently, there is no transparency around the identified corrective actions nor how the USMS and DOC are evaluating progress. For instance, what are the corrective actions and how

were they selected? How are DOC and USMS evaluating successful implementation of each action? Is D.C. on track to fully implement each action during the six-month timeline? How will D.C. measure whether these actions improve the conditions or culture at DOC? Will DOC continue to evaluate their impact after the six months are up? Will the D.C. Council be holding DOC accountable to carry out and maintain these corrective actions? Our neighbors, loved ones, and friends are incarcerated at the D.C. Jail. This is a District-wide issue and the community, especially our incarcerated community members, should know what DOC is doing to improve the conditions in the facility.

b. Responsiveness to FOIA Request

Another example of the lack of transparency in the current system is DOC's delayed response to CCE's most recent Freedom of Information Act (FOIA) request. We submitted a series of inquires related to DOC's use of administrative and disciplinary segregation (commonly known as solitary confinement) on July 27, 2021. Over the past seven months we have met repeatedly with DOC leadership to explain the requests, reorganize them for requested clarity, and offer information about prior DOC data that was provided following similar requests. To date, CCE has only received a copy of DOC's publicly available program statement on segregation, and a promise that other responsive records will be shared by mid-March. As an educator on justice system issues in the District, CCE believes that information about the isolation and confinement of D.C. residents housed in the facilities, programming availability and efficacy, and rates of COVID-19 transmission, are more important now than ever.

2) Establishing Permanent, Empowered Oversight of DOC

As DOC itself has said, transparency and accountability go hand-in-hand. As the District navigates transforming its criminal legal system, including fixing the systemic issues within the D.C. Jail, there must be permanent, empowered, independent oversight of the DOC. CCE is working with partners to develop proposals for creating such oversight and will share recommendations with the Committee shortly.

3) Prioritizing the Task Force’s Decarceration Policies

After synthesizing ideas and opinions from 2,000 D.C. residents, the Task Force called on D.C. to demolish its current jails and prioritize building a new, non-traditional facility. But to do this, D.C. must meaningfully reduce its incarcerated population. CCE most recently testified before this Committee on the Task Force’s diverse and detailed recommendations to safely and strategically reduce D.C.’s incarcerated population at the November 2021 [Public Oversight Roundtable on the Conditions of Confinement at the D.C. Jail](#). All of the information in today’s testimony regarding decarceration is also in that November 2021 testimony, but we believe bears repeating today in light of the increased focus on the conditions at the jails.

By way of context, we’d like to share some data about the people incarcerated in D.C. Of the people booked into DOC custody in 2018 (the most recent detailed data available), 58% exclusively had non-violent charges.⁷ DOC generally holds people in its jails for one of four reasons: 1) pretrial detention, 2) serving sentences under the D.C. code of less than a year, 3) those holding a person in the custody of another jurisdiction, such as the federal government or

⁷ Committee on Decarceration of the District Task Force on Jails & Justice. *Report of the Committee on Decarceration to the District Task Force on Jails & Justice*. August 2019. <http://www.courtexcellence.org/uploads/publications/Decarceration.pdf>

neighboring states, and 4) detention by the United States Parole Commission pending a revocation of supervised release or parole, which in most cases only involves technical supervision violations. In 2018, 36% of the average daily population (ADP) at DOC was unsentenced, 14% was sentenced, 16% was held by the USPC, and 34% was held in DOC custody due to a warrant for another jurisdiction or in transit to another jurisdiction.⁸ The U.S. Marshals Service investigation, and pending transfer of 400 people from the D.C. Jail, can only impact people who are at DOC but in federal custody, either because they are facing federal charges, because they have already been sentenced to felonies under D.C. law but have not yet transferred to a federal Bureau of Prisons (BOP) facility, or because they have been moved from the BOP back to D.C. for a court hearing. The U.S. Parole Commission has authority over another 16% of the ADP. The District itself has jurisdiction over the remaining half of the population and should implement the Task Force’s decarceration recommendations to safely lower that number.

Using a year’s worth of DOC data from 2018, the Task Force’s “[Incarcerated Population Project Analysis](#)” estimated that DOC’s ADP was 1,863 people.⁹ Our analysis found that if the Task Force’s recommendations on not holding people for “technical violations” of parole; releasing people detained pre-trial on non-violent charges; releasing people serving sentences of less than 30 days for non-violent convictions; releasing people with Substance Use Disorders with non-violent charges; using citation release in more eligible situations; and prosecuting

⁸ District Task Force on Jails & Justice. *Jails & Justice: A Framework for Change*. October 2019. Page 18, Figure 2. <http://www.courtexcellence.org/uploads/publications/FrameworkForChange.pdf>

⁹ District Task Force on Jails & Justice. *Future D.C. Incarcerated Population Projection for the District Task Force on Jails & Justice*. November 2020. http://www.courtexcellence.org/uploads/publications/Future_DC_Incarcerated_Population_Projection.pdf

everyone under 21 as a juvenile, the ADP would drop by 31%, allowing DOC's average daily population to safely drop by 524 people per day.

The Task Force also recommended amending the requirements to make more DOC residents eligible for work release and increase the number of residents transferred to a halfway house or home confinement. In FY18, DOC spent an average of \$241 a day per person incarcerated,¹⁰ compared to Fairview, the BOP-contracted halfway house for women, which charged about \$100 per day per person.¹¹ These changes would also significantly reduce the DOC sentenced population.

Reducing the population at DOC will not only remove people from the deteriorating conditions at the D.C. Jail, it may also help DOC improve the conditions for those still incarcerated. Decreasing the population would require less funding to be spent on food, sanitary needs, and healthcare for individuals, freeing up funding in DOC's budget to improve services and facilities for remaining residents. However, we must also note that the U.S. Marshals Service pays \$122.28 per day per person for people in their custody housed by DOC; if the Marshals go through with transferring 400 people out of the D.C. Jail, DOC will lose \$48,912 per day from its budget.¹²

Additionally, DOC is functioning with limited staff capacity. Decreasing DOC's population would increase the corrections officer to incarcerated person ratio and could give

¹⁰ District Task Force on Jails and Justice, *Jails & Justice: Our Transformation Starts Today, Phase II Findings and Implementation Plan*, February, 2021, Page 42.

<http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>

¹¹ District Task Force on Jails and Justice, *Jails & Justice: Our Transformation Starts Today, Phase II Findings and Implementation Plan*, February, 2021, Page 59-60.

<http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>

¹² Notes from call with Dept. of Corrections, on file with CCE.

DOC the flexibility to enact staffing changes or shifting staffing patterns to address the concerns raised by the U.S. Marshals Service. While the Task Force ultimately recommends building a new, non-traditional facility, we must still prioritize ensuring that our current facility is as clean, safe, habitable, and dignified as possible for those it houses.

4) **Building a New Facility**

Reducing D.C.'s incarcerated population allows the District to implement the [Task Force's plan](#) to demolish the D.C. Jail in 2027 and build a new, smaller, secure facility in 2030 that would hold both D.C.'s pretrial and sentenced populations. Both [CCE](#) and [Task Force](#) Chair Shelley Broderick have testified multiple times before this Committee regarding the need for a new, non-traditional facility. A new facility would house individuals in an environment that is essentially unrecognizable to the current one at the D.C. Jail, utilizing innovative, promising, and evidence-based practices to create a safer, healthier facility that supports personal growth. The Task Force has also done the math, and leaders can shorten the timeline for closing the D.C. Jail and opening the new facility by two years earlier if they start planning and acting now.

These changes, and more, will not happen at DOC without bold leadership. CCE welcomes Director Faust in his role as Director of DOC and looks forward to working collaboratively to ensure the safety, health, and dignity of our incarcerated neighbors and the larger D.C. community. However, CCE acknowledges that the systemic issues within DOC will not go away just because there is new leadership. There must also be increased transparency, accountability, and oversight while leaders simultaneously focus on reducing the incarcerated

population and investing in a new facility. To truly transform D.C.'s criminal legal system, there must be bold leadership from all governmental officials, including Director Faust, Deputy Mayor Geldart, the Council, and the Mayor.

This concludes our testimony. Thank you for your time, and we look forward to answering any questions you may have.